

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

COBALT COAL CORP. MINING, INC.

and

UNITED MINE WORKERS  
OF AMERICA, AFL-CIO

Cases 09-CA-092229  
09-CA-095354  
09-CA-096073

**MOTION TO VACATE AND REISSUE DECISION AND ORDER**

Counsel for the General Counsel moves, pursuant to Section 102.24 of the National Labor Relations Board's Rules and Regulations, for the Board to vacate and reissue its decision in the instant case.

In support of this Motion, Counsel for the General Counsel submits the following:

1. (a) The charge in Case 09-CA-092229 was filed by the Union on October 29, 2012, and a copy was served by regular mail on Respondent on October 30, 2012.  
  
(b) The first amended charge in Case 09-CA-092229 was filed by the Union on December 7, 2012, and a copy was served by regular mail on Respondent on December 10, 2012.  
  
(c) The second amended charge in Case 09-CA-092229 was filed by the Union on January 29, 2013, and a copy was served by regular mail on Respondent on January 30, 2013.  
  
(d) The charge in Case 09-CA-095354 was filed by the Union on December 20, 2012, and a copy was served by regular mail on Respondent on December 21, 2012.  
  
(e) The amended charge in Case 09-CA-095354 was filed by the Union on January 29, 2013, and a copy was served by regular mail on Respondent on January 30, 2013.  
  
(f) The charge in Case 09-CA-096073 was filed by the Union on January 9, 2013, and a copy was served by regular mail on Respondent on January 10, 2013.

2. On February 25, 2013, following completion of the investigation of the matters raised by the charges listed above, Counsel for the then-Acting General Counsel issued and served upon Respondent an Order Consolidating Cases, Consolidated Complaint, Compliance Specification, and Notice of Hearing (complaint) in Cases 09-CA-092229, 09-CA-095354, and 09-CA-096073, alleging that Respondent had violated Section 8(a)(1) and (3) of the Act.

3. On April 3, 2013, no answer having been received to the complaint, Counsel for the Acting General Counsel filed a Motion for Default Judgment with the Board urging it to deem the allegations of the complaint and compliance specification admitted.

4. On May 24, 2013, Chairman Pearce and Members Griffin and Block issued a Decision and Order granting the Acting General Counsel's Motion for Default Judgment, deeming the allegations of the complaint and compliance specification to be true and ordering affirmative relief, which is published at 359 NLRB No. 123 (2013) (not included in bound volumes). The Board's order requires Respondent to, inter alia, pay to the Board the amount of \$2,184 to make employees whole for Respondent's unfair labor practices.

5. At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid.

6. A valid determination by the Board that Respondent violated the Act as alleged is required for Respondent to become subject to a legal obligation to pay the amounts owed. In light of the foregoing, Counsel for the General Counsel respectfully adopts and realleges the contentions set forth in the Acting General Counsel's prior Motion for Default Judgment as

though fully set forth herein, and accordingly moves that the Board (i) vacate its prior Decision and Order dated May 24, 2013; (ii) reconsider the matter *de novo*, (iii) issue a new Decision and Order adopting and incorporating by reference the Board's prior Decision and Order for the reasons stated therein; and (iv) find the allegations of the complaint to be true and order Respondent to remedy its unfair labor practices in the manner set forth in the Board's prior Decision and Order.

Dated: June 22, 2018

Respectfully submitted,

*/s/ Daniel A. Goode*

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## **CERTIFICATE OF SERVICE**

June 22, 2018

I hereby certify that I served the attached Motion to Vacate and Reissue Decision and Order on all parties by e-mailing true copies thereof to the following at the addresses listed below:

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